



Docket No.: 203744US6

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

OBLON
SPIVAK
McCLELLAND
MAIER
&
NEUSTADT
P.C.

ATTORNEYS AT LAW

RE: Application Serial No.: 09/585,870

Applicants: Tetsuo MAEDA

Filing Date: June 1, 2000

For: DISC DRIVE AND OPTICAL DISC DRIVE

Group Art Unit: 2652

Examiner: DAVIS, D.

RECEIVED

OCT 27 2003

Technology Center 2600

SIR:

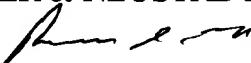
Attached hereto for filing are the following papers:

RESPONSE TO RESTRICTION REQUIREMENT

Our check in the amount of _____ is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Registration No. 40,073

Customer Number

22850

(703) 413-3000 (phone)

(703) 413-2220 (fax)

I:\ATTY\PH\20s\203744\CVR SHT 102403.doc

203744US6



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

11/16
11/17
S/13/04

IN RE APPLICATION OF:

Tetsuo MAEDA : EXAMINER: DAVIS, D.

SERIAL NO: 09/585,870 :

FILED: June 1, 2000 : GROUP ART UNIT: 2652

FOR: DISC DRIVE AND OPTICAL DISC DRIVE

RECEIVED

OCT 27 2003

RESPONSE TO RESTRICTION REQUIREMENT Technology Center 2600

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Office Action dated September 24, 2003, Applicants elect with traverse Species I, examples of which are illustrated in Figures 6 and 7. Accordingly, Applicants identify Claims 1-26 as readable on the provisionally elected species.

Applicants respectfully traverse the outstanding requirement for several reasons.

First, the outstanding Office Action merely includes the conclusory statement that “[t]his application contains claims directed to the following patentably distinct species” without stating any basis whatsoever in support of such a finding. This is in violation of MPEP § 816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

CR S/20104

In the absence of any annunciated basis, it is respectfully submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Secondly, MPEP § 806.04(f) requires:

Claims to be restricted to different species must be mutually exclusive.

The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics and this failure provides a further basis for traversing the election of species requirement.

Finally, MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area. Further, Applicants respectfully assert that the Examiner has presumably already conducted multiple searches on both of the identified species. Accordingly, Applicants also respectfully traverse the outstanding requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

Therefore, it is respectfully requested that the requirement to elect a single species be withdrawn, and that a full examination on the merits of Claims 1-26 be conducted.

Further, for the reasons discussed in Applicants' Request for Reconsideration filed on July 9, 2003, Claims 1-26 are allowable over the applied references. Consequently, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. A Notice of Allowance for Claims 1-26 is earnestly solicited.

Application No: 09/585,870
Reply to Office Action of September 24, 2003

Should the Examiner deem that any further action is necessary to place the application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Registration No. 40,073
Attorney of Record

I:\ATTY\PH\20s\203744\ELECT_RESP 102403.DOC